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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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FILE

In the Matter

National Exchange Carriers  
Association, Inc. Request  
for Rule Change Concerning  
the Composition of its Board of  
Directors

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) RM 7736  
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COMMENTS OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Comments in response to the June 7, 1991 Public Notice establishing a pleading cycle for Comments on a Petition for Rulemaking filed by the National Exchange Carrier Association, Inc. ("NECA") on May 24, 1991. NTCA is also submitting comments in the related Docket AAD 91-28 in support of NECA's Petition for Waiver of Section 69.602 of the Commission's Rules.

NTCA is a national association of over 480 small exchange carriers ("ECs") providing telecommunications services to subscribers and interexchange carriers ("IXCs") throughout rural America. Its members are in the Subset III carrier group as defined in 47 C.F.R. § 69.602 (a). That Subset elects nine members to the NECA Board of Directors.

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## DISCUSSION

- I. ANY RULE CHANGE AFFECTING QUALIFICATIONS FOR ADDITIONAL DIRECTORS OF THE BOARD OF THE NATIONAL EXCHANGE CARRIER ASSOCIATION SHOULD ENCOMPASS COMMISSION POLICY ESTABLISHED UPON CREATION OF THE ASSOCIATION.
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NECA's Petition requests that the Commission institute a Rulemaking to allow the addition of two "outside directors." It proposes that term be defined to exclude "(1) a current or former employee of the Association or member company or any relative of any such officer or employee; and (2) a person having a business relationship or other interest that could interfere with the exercise of independent judgment as a director."

(Exhibit 1 to NECA Petition.)

NECA has indicated that it is requesting the Rule change to assure that the public maintains its confidence in the integrity of its processes and the diligence of its management.

NTCA agrees that public confidence is an important consideration which needs to be addressed to assure continued operation of NECA administered pools, tariff filings, and other functions approved by the Commission. It suggests, however, that the Commission should ground approval of the requested Rule change on the initial policy which led to the establishment of NECA and the framing of rules governing selection of the NECA Board.

In its Third Report and Order in MTS and WATS Market Structure, FCC 82-579, released February 28, 1983, para. 345, the

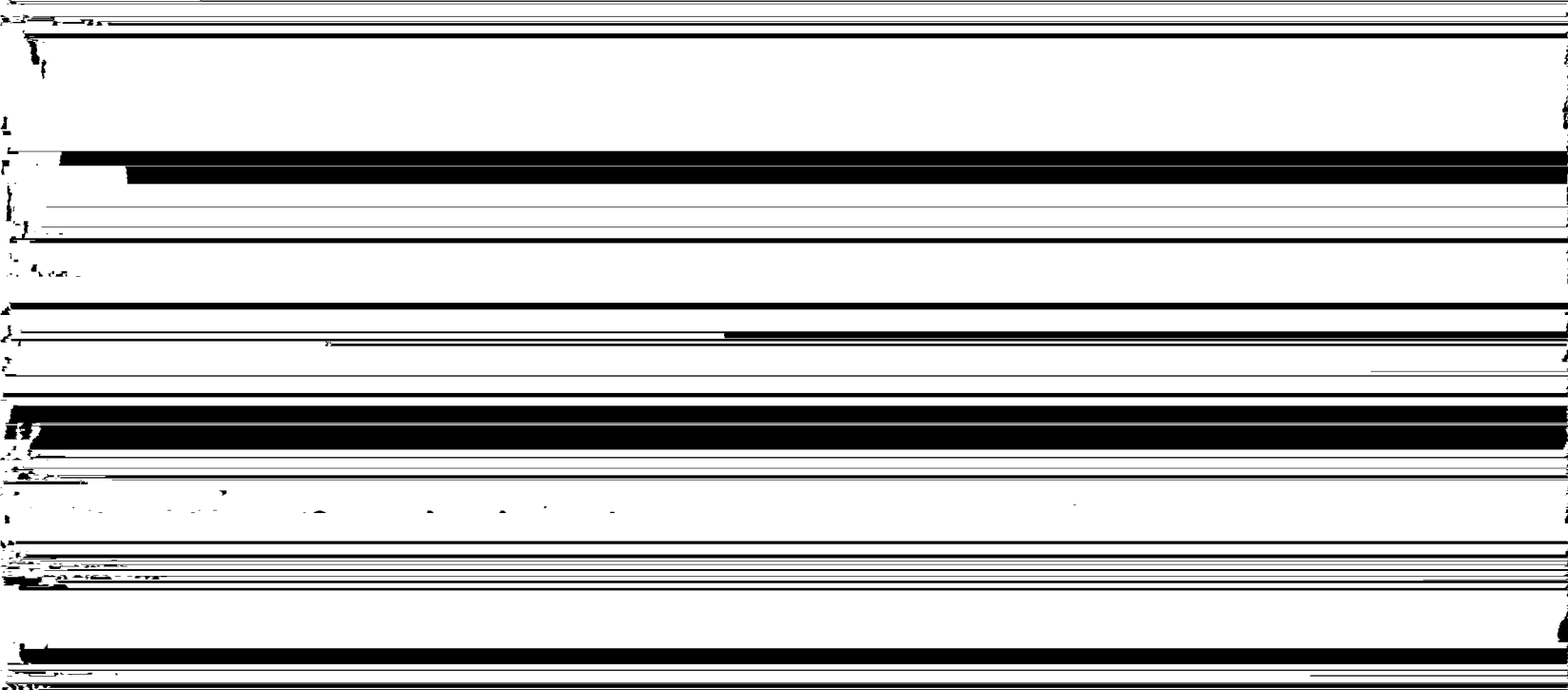
Commission decided that NECA's governing board should be composed "exclusively of exchange carrier representatives." The Commission had before it, at that time, proposals to include on the NECA Board representatives from the Commission, state commissioners, interexchange carriers and consumers. It decided against the inclusion of any of these groups. With respect to Commission representation, it decided that inclusion of such a representative would be "unwise." With respect to the inclusion of representatives from the other suggested groups, it said, "We have also decided not to accept suggestions that state commissions, interexchange carriers or consumers be represented on the governing board of the association. As we stated in the Fourth Supplemental Notice, 'the Communications Act already provides safeguards adequate to protect the interests of these groups in the fair, evenhanded implementation of any access charge plan we might adopt.'" Id. para. 345.

The Commission's decision to limit membership on the NECA board to exchange carrier representatives was originally grounded on the recognition that NECA would act as an agent for exchange carriers. This new agent was needed to replace AT&T's predivestiture role as the tariff filing agent and the entity that performed most of the administrative functions in connection with the settlements pooling arrangement for the entire exchange carrier industry. In limiting membership to exchange carriers, the Commission wisely and implicitly recognized that the prospective NECA board members could best fulfill their fiduciary

responsibilities if they represented the exchange carriers on whose behalf the Association performed the filing and pool administration functions. That limitation along with the balance which apportions board members among Subsets has consistently permitted the Association to perform the tariff filing and pool administration duties without needless internal board conflict. Further, the existing structure coupled with the Commission's Access Charge Rules has promoted efficient Commission review and regulation of a complicated access charge scheme.

In view of this Commission policy recognizing the agency functions NECA must perform on behalf of exchange carriers, NTCA urges the Commission to proceed cautiously in changing its rules to add directors to the NECA board. The Commission should not interpret NECA's request as an opportunity to place adversaries of the Association on the Board.

As NECA acknowledges, everyone of its existing board members is an "outside" director already as that term ordinarily refers to a non-employee member of a board. The new outside directors, like the existing ones will be required to manage the



NTCA disagrees with the limitation against service by former officers, employees and the relatives of former officers and employees of member companies. This limitation excludes a range of qualified persons who may have no existing ties to member companies but possess valuable knowledge and skills and the ability to perform the fiduciary duties required of Board members. The limitation would, for example, exclude anyone who ever served as a member of the Board of the 250 telephone cooperatives operating in the United States. In view of this, NTCA suggests the following substitute for NECA's proposed Section 69.602(f)(1):

(f) An outside director of the association shall mean a director who is not:

(1) a current officer or employee of the association or member company or any relative of any such current officer or employee;

II. THE COMMISSION SHOULD FOLLOW THE ASSOCIATION'S SUGGESTED PROCEDURE FOR NOMINATING AND SELECTING TWO ADDITIONAL DIRECTORS.

NECA has not requested a specific rule to that effect but indicates that screening of the additional director candidates would take place during the nomination process which would be conducted by the NECA Board Election Committee. NECA also states that the Election Committee would solicit qualified candidates from the business, professional, financial, and academic communities, including ex-governmental officials.

Nominees deemed qualified by the Board of Directors would be listed on NECA's annual Board ballot and two directors would be selected by the NECA membership. NTCA agrees with this

procedure. It comports with the existing procedure for selecting Board directors. It will treat the election of the new directors like the election of all other directors. Both the industry and the Board will benefit from an election procedure which is consistent and fair for everyone.

#### CONCLUSION

For the above stated reasons, NTCA supports NECA's request that the Commission establish two additional board member positions. NTCA requests that the Commission modify NECA's

proposal to permit former officers and employees to serve in

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in RM 7736 was served on this 10th day of July 1991, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

  
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